IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.106 of 2003

Date of decision 21.5.2007

H.P.S.E.B. and another Petitioners

Vs.

Joginder Singh and another Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioners: Mr. Sharwan Dogra, Advocate.

For the Respondents : Nemo.

Rajiv Sharma,J.(Oral)

This petition is directed against the award passed by learned, Presiding Judge, H.P.Labour Court, Shimla on 30.3.2002.

The brief facts necessary for the adjudication of this petition are that the respondent hereinafter referred to as workman for the convenience sake, raised a dispute relating to his retrenchment which was ultimately referred by the State Government to the Labour Court to determine as to "whether Sh.Joginder Singh son of Sh.Baga Ram and two other workmen had served for more than 240 days as daily wager Beldars under Executive Engineer, TLC Division, Nahan of HPSEB and their services had been terminated without complying with the provisions of Section 25-F and 25-H of the Industrial Disputes Act? Whether this termination was justified? If not to what compensation and other benefits they are entitled to?".

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

In sequel to reference made by the State Government the workman had filed statement of claim stating therein that he had worked on daily wages for different period from November, 1985 to August, 1987 and during this period he had completed more than 240 days. The workman had also contended before the Labour Court that his retrenchment has been effected in violation of mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. The employer Board had filed reply to the statement of claim and had raised preliminary objection of delay and laches in raising the dispute and on merits the relationship of master and servant, was denied. The learned Labour Court on the basis of the pleadings of the parties had answered the reference in affirmative and held the workman entitled to be reinstated in job with continuity in service and seniority from the receipt of the reference but without back wages.

Shri Sharwan Dogra, learned counsel appearing on behalf of the employer Board had strenuously argued that the workman had not completed 240 days and the dispute could not be raised after ten years.

I have heard Mr.Dogra, learned counsel appearing on behalf of the employer Board and perused the record.

It is evident from the record that the workman had completed 382 days from 4.11.1985 to 20.11.1986 and then 181 days from 21.2.1987 to 20.8.1987. The Labour Court had not correctly applied the principle of counting 240 days preceding the date of retrenchment. The Labour Court had to calculate 12 calendar months from August, 1987 backwards up to August, 1986. If the days are calculated from 20.8.1987 backwards in that eventuality the workman had completed 240 days preceding his retrenchment i.e. 20.8.1987. As such the Labour Court had come to a right conclusion that the workman after the completion of 240 days was entitled to protection of Section 25-F of the Industrial Disputes Act, 1947. Since the workman’s retrenchment has been effected without following Section

25-F of the Act he was rightly held entitled to reinstatement though without back wages. The Labour Court had come to a just conclusion that the entire reference could not be rejected on the ground of delay and laches but the relief could be moulded. In the present case since the dispute has been raised after 10 years the workman had not been held entitled to back wages which in normal circumstances he would have been entitled if he had raised the dispute within reasonable time. There is neither any jurisdictional error nor procedural irregularity in the award dated 30.3.2002. Accordingly the writ petition is dismissed and the Award dated 30.3.2002 is upheld.

May 21,2007(g) **(Rajiv Sharma), J.**